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13 Adobe Systems Inc.

14 UNITED STATES DISTRICT COURT
15
16 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION
17

18 IN RE: HIGH-TECH EMPLOYEE
19 ANTITRUST LITIGATION

20 THIS DOCUMENT RELATES TO:
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22 ALL ACTIONS
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Master Docket No. 11-CV-2509-LHK

**DEFENDANT ADOBE SYSTEMS
INC.'S ANSWER TO PLAINTIFFS'
CONSOLIDATED AMENDED
COMPLAINT**

JURY DEMAND

ANSWER AND AFFIRMATIVE DEFENSES

Defendant Adobe Systems Inc. hereby answers the Consolidated Amended Complaint (“CAC”) filed by plaintiffs’ Michael Devine, Mark Fichtner, Siddharth Hariharan, Brandon Marshall, and Daniel Stover (“Plaintiffs”) on September 13, 2011. Except as expressly admitted below, Adobe denies each and every allegation and claim in the CAC.

1. The allegations in Paragraph 1 are not susceptible to being answered because of their ambiguity and because they call for legal conclusions to which no answer is required. To the extent that an answer is deemed necessary and the allegations are directed at other defendants or third-parties, Adobe lacks knowledge or information sufficient to form a belief as to the truth of the allegations and on that basis denies them. Adobe denies that it has engaged in a conspiracy to fix and suppress the compensation of its employees, denies that it entered into an interconnected web of express agreements to eliminate competition among Defendants for skilled labor, denies that it agreed to limit counter offers to candidates above initial offers, denies that it engaged in any unlawful conduct or violated any law and otherwise denies the allegations in Paragraph 1.

2. The allegations in the first and second sentences of Paragraph 2 are not susceptible to being answered because of their ambiguity and because they call for legal conclusions to which no answer is required. To the extent that an answer is deemed necessary and the allegations are directed at other defendants or third-parties, Adobe lacks knowledge or information sufficient to form a belief as to the truth of the allegations and on that basis denies them. To the extent that an answer is deemed necessary and the allegations are directed at Adobe, Adobe denies the allegations. Answering the allegations in the third sentence of Paragraph 2, Adobe admits that Plaintiffs purport to bring claims under Section 1 of the Sherman Act, 15 U.S.C. § 1, and the Cartwright Act, California Business and Professions Code §§ 16720, et seq., but denies that it engaged in any unlawful conduct or violated any law and otherwise denies the remaining allegations in Paragraph 2.¹

¹ The Plaintiffs withdrew their claims under California Business and Professions Code § 16600, and the Court dismissed the Plaintiffs’ claims under the California Business and Professions Code §§ 17200, et seq. Order Granting In Part And Denying In Part Defendants’ Joint Motion to Dismiss; Denying Lucasfilm Ltd.’s Motion to Dismiss, 8 & n.6, 29 (Apr. 18,

3. Answering the allegations in the first sentence of Paragraph 3, Adobe admits that the DOJ conducted an investigation of Defendants' recruiting practices between 2009 and 2010 but otherwise denies the allegations. Adobe denies the allegations in the second and third sentences that the DOJ made factual or legal findings. The quoted text are unproven allegations made by the DOJ in the Complaint filed in *United States v. Adobe Sys. Inc., Apple Inc., Google Inc., Intel Corp., Intuit, Inc. & Pixar*, No. 1:10-cv-01629-RBW (D.D.C. Sept. 24, 2010) (Doc. 1). That matter was resolved without litigation and was resolved "without trial or adjudication of any issue of fact or law." *United States v. Adobe Sys. Inc., Apple Inc., Google Inc., Intel Corp., Intuit, Inc. & Pixar*, No. 1:10-cv-01629-RBW (D.D.C. Mar. 18, 2011) (Doc. 17), pp. 2-3. Adobe denies that it engaged in any unlawful conduct or violated any law, denies each allegation in the quoted text, and otherwise denies the remaining allegations in Paragraph 3.

4. The allegations in the first sentence of Paragraph 4 are not susceptible to being answered because of their ambiguity. To the extent that an answer is deemed necessary and the allegations are directed at other defendants or third-parties, Adobe lacks knowledge or information sufficient to form a belief as to the truth of the allegations and on that basis denies them. To the extent that an answer is deemed necessary and the allegations are directed at Adobe, Adobe denies that employees were injured by any alleged agreement involving Adobe. Adobe otherwise lacks knowledge or information sufficient to form a belief about the truth of the allegations in the first sentence of Paragraph 4 and on that basis denies the allegations. Adobe denies the remaining allegations in Paragraph 4.

5. Adobe admits that Plaintiffs seek damages and purport to bring claims under Section 1 of the Sherman Act, 15 U.S.C. § 1, and the Cartwright Act, California Business and Professions Code §§ 16720, et seq., but denies that it violated any law and otherwise denies the allegations in Paragraph 5. To the extent that the allegations are directed at other defendants or third-parties, Adobe lacks knowledge or information sufficient to form a belief as to the truth of

(continued...)

2012) (Doc. 119). The Plaintiffs also withdrew their prayer for injunctive declaratory relief. *Id.* at 8 n.7.

1 the allegations and on that basis denies them.

2 6. The allegations in Paragraph 6 state legal conclusions to which no answer is
3 required.

4 7. The allegations in Paragraph 7 state legal conclusions to which no answer is
5 necessary. To the extent that an answer is deemed necessary and the allegations are directed at
6 other defendants or third-parties, Adobe lacks knowledge or information sufficient to form a
7 belief as to the truth of the allegations and on that basis denies them. To the extent that an answer
8 is deemed necessary and the allegations are directed at Adobe, Adobe admits that it conducts
9 business and is headquartered in the Northern District of California and that venue is proper to the
10 extent that this Court has subject matter jurisdiction and otherwise denies the allegations in
11 Paragraph 7.

12 8. The allegations in Paragraph 8 state legal conclusions to which no answer is
13 necessary. To the extent that an answer is deemed necessary and the allegations are directed at
14 other defendants or third-parties, Adobe lacks knowledge or information sufficient to form a
15 belief as to the truth of the allegations and on that basis denies them. To the extent that an answer
16 is deemed necessary and the allegations are directed at Adobe, Adobe admits that the Northern
17 District of California has personal jurisdiction over it for the purposes of this action but otherwise
18 denies the remaining allegations in Paragraph 8.

19 9. The allegations in Paragraph 9 state legal conclusions to which no answer is
20 necessary. To the extent that an answer is deemed necessary, Adobe denies the allegations in
21 Paragraph 9.

22 10. The allegations in Paragraph 10 are not susceptible to being answered because of
23 their ambiguity and because they state legal conclusions to which no answer is required. To the
24 extent that an answer is deemed necessary and the allegations are directed at other defendants or
25 third-parties, Adobe lacks knowledge or information sufficient to form a belief as to the truth of
26 the allegations and on that basis denies them. To the extent that an answer is deemed necessary
27 and the allegations are directed at Adobe, Adobe denies the allegations in Paragraph 10.

28 11. The allegations in Paragraph 11 are not susceptible to being answered because of

1 their ambiguity and because they state legal conclusions to which no answer is required. To the
2 extent that an answer is deemed necessary and the allegations are directed at other defendants or
3 third-parties, Adobe lacks knowledge or information sufficient to form a belief as to the truth of
4 the allegations and on that basis denies them. To the extent that an answer is deemed necessary
5 and the allegations are directed at Adobe, Adobe denies the allegations in Paragraph 11.

6 12. The allegations in Paragraph 12 are not susceptible to being answered because of
7 their ambiguity. To the extent that an answer is deemed necessary and the allegations are directed
8 at other defendants or third-parties, Adobe lacks knowledge or information sufficient to form a
9 belief as to the truth of the allegations and on that basis denies them. To the extent that an answer
10 is deemed necessary and the allegations are directed at Adobe, Adobe admits that its employment
11 relationship with Mr. Marshall was in Santa Clara County, California. Adobe denies that its
12 relationship with Mr. Devine was in California. Mr. Devine was employed by Adobe in
13 Washington. Adobe otherwise lacks knowledge or information sufficient to form a belief about
14 the truth of the allegations in Paragraph 12 and on that basis denies the allegations.

15 13. To the extent that the allegations in Paragraph 13 are directed at other defendants
16 or third-parties, Adobe lacks knowledge or information sufficient to form a belief as to the truth
17 of the allegations and on that basis denies them. To the extent that the allegations are directed at
18 Adobe, Adobe denies the allegations in Paragraph 13.

19 14. The allegations in Paragraph 14 are not susceptible to being answered because of
20 their ambiguity and because they state legal conclusions to which no answer is required. To the
21 extent an answer is deemed necessary, Adobe denies the allegations in Paragraph 14.

22 15. The allegations in Paragraph 15 are not susceptible to being answered because of
23 their ambiguity and because they state legal conclusions to which no answer is required. To the
24 extent an answer is deemed necessary, Adobe denies the allegations in Paragraph 15.

25 16. Answering the allegations in Paragraph 16, Adobe admits that from approximately
26 October 2006 through July 7, 2008, Mr. Devine worked in the state of Washington as a software
27 engineer for Adobe. Adobe denies that Mr. Devine was injured in his business or property by
28 reason of the allegations in the CAC. Adobe otherwise lacks knowledge or information sufficient

1 to form a belief about the truth of the allegations in Paragraph 16 and on that basis denies the
2 allegations.

3 17. Adobe lacks knowledge or information sufficient to form a belief about the truth of
4 the allegations in Paragraph 17 and on that basis denies the allegations.

5 18. Adobe lacks knowledge or information sufficient to form a belief about the truth of
6 the allegations in Paragraph 18 and on that basis denies the allegations.

7 19. Answering the allegations in Paragraph 19, Adobe admits that from approximately
8 July 2006 through December 2006 Mr. Marshall worked in Santa Clara County, California, as a
9 software engineer for Adobe Systems Inc. Adobe denies that Mr. Marshall was injured in his
10 business or property by reason of the allegations in the CAC. Adobe otherwise lacks knowledge
11 or information sufficient to form a belief about the truth of the allegations in Paragraph 19 and on
12 that basis denies the allegations.

13 20. Adobe lacks knowledge or information sufficient to form a belief about the truth of
14 the allegations in Paragraph 20 and on that basis denies the allegations.

15 21. Answering the allegations in Paragraph 21, Adobe admits that it is a Delaware
16 corporation with its principal place of business located at 345 Park Avenue, San Jose, California
17 95110.

18 22. Adobe lacks knowledge or information sufficient to form a belief about the truth of
19 the allegations in Paragraph 22 and on that basis denies the allegations.

20 23. Adobe lacks knowledge or information sufficient to form a belief about the truth of
21 the allegations in Paragraph 23 and on that basis denies the allegations.

22 24. Adobe lacks knowledge or information sufficient to form a belief about the truth of
23 the allegations in Paragraph 24 and on that basis denies the allegations.

24 25. Adobe lacks knowledge or information sufficient to form a belief about the truth of
25 the allegations in Paragraph 25 and on that basis denies the allegations.

26 26. Adobe lacks knowledge or information sufficient to form a belief about the truth of
27 the allegations in Paragraph 26 and on that basis denies the allegations.

28 27. Adobe lacks knowledge or information sufficient to form a belief about the truth of

1 the allegations in Paragraph 27 and on that basis denies the allegations.

2 28. The allegations in Paragraph 28 are not susceptible to being answered because of
3 their ambiguity and because they call for legal conclusions to which no answer is required. To
4 the extent that an answer is deemed necessary and the allegations are directed at other defendants
5 or third-parties, Adobe lacks knowledge or information sufficient to form a belief as to the truth
6 of the allegations and on that basis denies them. To the extent that an answer is deemed
7 necessary and the allegations are directed at Adobe, Adobe denies the allegations in Paragraph
8 28.

9 29. The allegations in Paragraph 29 are not susceptible to being answered because of
10 their ambiguity and because they call for legal conclusions to which no answer is required. To
11 the extent that an answer is deemed necessary and the allegations are directed at other defendants
12 or third-parties, Adobe lacks knowledge or information sufficient to form a belief as to the truth
13 of the allegations and on that basis denies them. To the extent that an answer is deemed
14 necessary and the allegations are directed at Adobe, Adobe denies the allegations in Paragraph
15 29.

16 30. Answering the allegations in Paragraph 30, Adobe admits that Plaintiffs purport to
17 bring this action on behalf of themselves and others. Adobe denies that Plaintiffs have
18 established or can establish the prerequisites to certification and/or maintenance of the alleged
19 classes pursuant to Rule 23 of the Federal Rules of Civil Procedure, and otherwise denies the
20 allegations in Paragraph 30.

21 31. Adobe denies the allegations in Paragraph 31.

22 32. Adobe denies the allegations in Paragraph 32.

23 33. Adobe denies the allegations in Paragraph 33.

24 34. Adobe denies the allegations in Paragraph 34.

25 35. Adobe denies the allegations in Paragraph 35.

26 36. Adobe denies the allegations in Paragraph 36.

27 37. Answering the allegations in Paragraph 37, Plaintiffs have withdrawn their request
28 for injunctive relief, so no answer is necessary. To the extent that an answer is deemed necessary

1 and the allegations are directed at other defendants or third-parties, Adobe lacks knowledge or
2 information sufficient to form a belief as to the truth of the allegations and on that basis denies
3 them. To the extent that an answer is deemed necessary and the allegations are directed at Adobe,
4 Adobe denies the allegations in Paragraph 37.

5 38. Adobe denies the allegations in Paragraph 38.

6 39. The allegations in Paragraph 39 are not susceptible to being answered because of
7 their ambiguity. To the extent that an answer is deemed necessary and the allegations are directed
8 at other defendants or third-parties, Adobe lacks knowledge or information sufficient to form a
9 belief as to the truth of the allegations and on that basis denies them. To the extent that an answer
10 is deemed necessary and the allegations are directed at Adobe, Adobe admits that it employed
11 people in the United States, in California, and in the Northern District of California during the
12 period of January 1, 2005 through January 1, 2010 and otherwise denies the allegations.

13 40. The allegations in Paragraph 40 are not susceptible to being answered because of
14 their ambiguity. To the extent that an answer is deemed necessary and the allegations are directed
15 at other defendants or third-parties, Adobe lacks knowledge or information sufficient to form a
16 belief as to the truth of the allegations and on that basis denies them. To the extent that an answer
17 is deemed necessary and the allegations are directed at Adobe, Adobe denies the allegations in
18 Paragraph 40.

19 41. The allegations in Paragraph 41 are not susceptible to being answered because of
20 their ambiguity and because they call for legal conclusions to which no answer is required. To
21 the extent that an answer is deemed necessary and the allegations are directed at other defendants
22 or third-parties, Adobe lacks knowledge or information sufficient to form a belief as to the truth
23 of the allegations and on that basis denies them. To the extent that an answer is deemed
24 necessary and the allegations are directed at Adobe, Adobe admits cold calling—soliciting a
25 person about employment who had not previously contacted Adobe—is one recruiting technique.
26 Adobe denies the remaining allegations in Paragraph 41.

27 42. The allegations in Paragraph 42 are not susceptible to being answered because of
28 their ambiguity. To the extent that an answer is deemed necessary and the allegations are directed

1 at other defendants or third-parties, Adobe lacks knowledge or information sufficient to form a
2 belief as to the truth of the allegations and on that basis denies them. To the extent that an answer
3 is deemed necessary and the allegations are directed at Adobe, Adobe denies the allegations in
4 Paragraph 42.

5 43. The allegations in Paragraph 43 are not susceptible to being answered because of
6 their ambiguity. To the extent that an answer is deemed necessary and the allegations are directed
7 at other defendants or third-parties, Adobe lacks knowledge or information sufficient to form a
8 belief as to the truth of the allegations and on that basis denies them. To the extent that an answer
9 is deemed necessary and the allegations are directed at Adobe, Adobe denies the allegations in
10 Paragraph 43.

11 44. The allegations in Paragraph 44 are not susceptible to being answered because of
12 their ambiguity. To the extent that an answer is deemed necessary and the allegations are directed
13 at other defendants or third-parties, Adobe lacks knowledge or information sufficient to form a
14 belief as to the truth of the allegations and on that basis denies them. To the extent that an answer
15 is deemed necessary and the allegations are directed at Adobe, Adobe denies the allegations the
16 allegations in Paragraph 44.

17 45. The allegations in Paragraph 45 are not susceptible to being answered because of
18 their ambiguity. To the extent that an answer is deemed necessary and the allegations are directed
19 at other defendants or third-parties, Adobe lacks knowledge or information sufficient to form a
20 belief as to the truth of the allegations and on that basis denies them. To the extent that an answer
21 is deemed necessary and the allegations are directed at Adobe, Adobe admits that cold calling is
22 one recruiting technique used by Adobe and otherwise denies the remaining allegations in
23 Paragraph 45.

24 46. The allegations in the first and second sentences of Paragraph 46 are not
25 susceptible to being answered because of their ambiguity. To the extent that an answer is deemed
26 necessary and the allegations are directed at other defendants or third-parties, Adobe lacks
27 knowledge or information sufficient to form a belief as to the truth of the allegations and on that
28 basis denies them. To the extent that an answer is deemed necessary and the allegations are

1 directed at Adobe, Adobe denies the allegations in the first and second sentences. Answering the
2 remaining allegations in Paragraph 46, Adobe admits that an employee may attempt to use an
3 offer from another firm to negotiate increased compensation from her current employer and
4 otherwise denies the remaining allegations in Paragraph 46.

5 47. The allegations in Paragraph 47 are not susceptible to being answered because of
6 their ambiguity. To the extent that an answer is deemed necessary and the allegations are directed
7 at other defendants or third-parties, Adobe lacks knowledge or information sufficient to form a
8 belief as to the truth of the allegations and on that basis denies them. To the extent that an answer
9 is deemed necessary and the allegations are directed at Adobe, Adobe lacks knowledge or
10 information sufficient to form a belief about the truth of the allegations in Paragraph 47 and on
11 that basis denies the allegations.

12 48. The allegations in Paragraph 48 are not susceptible to being answered because of
13 their ambiguity. To the extent that an answer is deemed necessary and the allegations are directed
14 at other defendants or third-parties, Adobe lacks knowledge or information sufficient to form a
15 belief as to the truth of the allegations and on that basis denies them. To the extent that an answer
16 is deemed necessary and the allegations are directed at Adobe, Adobe denies the allegations in
17 Paragraph 48.

18 49. The allegations in Paragraph 49 are not susceptible to being answered because of
19 their ambiguity. To the extent that an answer is deemed necessary and the allegations are directed
20 at other defendants or third-parties, Adobe lacks knowledge or information sufficient to form a
21 belief as to the truth of the allegations and on that basis denies them. To the extent that an answer
22 is deemed necessary and the allegations are directed at Adobe, Adobe denies the allegations in
23 Paragraph 49.

24 50. The allegations in Paragraph 50 are not susceptible to being answered because of
25 their ambiguity. To the extent that an answer is deemed necessary and the allegations are directed
26 at other defendants or third-parties, Adobe lacks knowledge or information sufficient to form a
27 belief as to the truth of the allegations and on that basis denies them. To the extent that an answer
28 is deemed necessary and the allegations are directed at Adobe, Adobe denies the allegations.

1 51. The allegations in Paragraph 51 are not susceptible to being answered because of
2 their ambiguity. To the extent that an answer is deemed necessary and the allegations are directed
3 at other defendants or third-parties, Adobe lacks knowledge or information sufficient to form a
4 belief as to the truth of the allegations and on that basis denies them. To the extent that an answer
5 is deemed necessary and the allegations are directed at Adobe, Adobe admits that it monitors and
6 manages compensation levels to achieve certain goals, including maintaining certain
7 compensation relationships among employees within the same employment categories;
8 maintaining certain compensation relationships among employees across different employment
9 categories (e.g., between junior engineers and senior engineers); maintaining employee morale
10 and productivity; retaining employees; and attracting new employees. Adobe otherwise denies
11 the allegations in Paragraph 51.

12 52. The allegations in Paragraph 52 are not susceptible to being answered because of
13 their ambiguity. To the extent that an answer is deemed necessary and the allegations are directed
14 at other defendants or third-parties, Adobe lacks knowledge or information sufficient to form a
15 belief as to the truth of the allegations and on that basis denies them. To the extent that an answer
16 is deemed necessary and the allegations are directed at Adobe, Adobe admits that it sets baseline
17 compensation levels for different employee categories that apply to all employees within those
18 categories, that it compares baseline compensation levels across different employee categories,
19 and that at times it modifies baseline compensation levels depending on a number of factors.
20 Adobe denies the remaining allegations in Paragraph 52.

21 53. The allegations in Paragraph 53 are not susceptible to being answered because of
22 their ambiguity. To the extent that an answer is deemed necessary and the allegations are directed
23 at other defendants or third-parties, Adobe lacks knowledge or information sufficient to form a
24 belief as to the truth of the allegations and on that basis denies them. To the extent that an answer
25 is deemed necessary and the allegations are directed at Adobe, Adobe admits that the baseline
26 compensation level for a position is a factor Adobe considers when deciding the compensation for
27 a particular employee and otherwise denies the remaining allegations in Paragraph 53.

28 54. The allegations in Paragraph 54 are not susceptible to being answered because of

1 their ambiguity. To the extent that an answer is deemed necessary and the allegations are directed
2 at other defendants or third-parties, Adobe lacks knowledge or information sufficient to form a
3 belief as to the truth of the allegations and on that basis denies them. To the extent that an answer
4 is deemed necessary and the allegations are directed at Adobe, Adobe denies allegations in
5 Paragraph 54.

6 55. The allegations in Paragraph 55 are not susceptible to being answered because of
7 their ambiguity. To the extent that an answer is deemed necessary and the allegations are directed
8 at other defendants or third-parties, Adobe lacks knowledge or information sufficient to form a
9 belief as to the truth of the allegations and on that basis denies them. To the extent that an answer
10 is deemed necessary and the allegations are directed at Adobe, Adobe denies the allegations in
11 Paragraph 55.

12 56. The allegations in Paragraph 56 are not susceptible to being answered because of
13 their ambiguity. To the extent that an answer is deemed necessary and the allegations are directed
14 at other defendants or third-parties, Adobe lacks knowledge or information sufficient to form a
15 belief as to the truth of the allegations and on that basis denies them. To the extent that an answer
16 is deemed necessary and the allegations are directed at Adobe, Adobe denies the allegations in
17 Paragraph 56.

18 57. The allegations in Paragraph 57 are not susceptible to being answered because of
19 their ambiguity. To the extent that an answer is deemed necessary and the allegations are directed
20 at other defendants or third-parties, Adobe lacks knowledge or information sufficient to form a
21 belief as to the truth of the allegations and on that basis denies them. To the extent that an answer
22 is deemed necessary and the allegations are directed at Adobe, Adobe denies the allegations in
23 Paragraph 57.

24 58. Answering the allegations in Paragraph 58, Adobe lacks knowledge or information
25 sufficient to form a belief as to the truth of the allegations and on that basis denies them.

26 59. Answering the allegations in Paragraph 59, Adobe lacks knowledge or information
27 sufficient to form a belief as to the truth of the allegations and on that basis denies them.

28 60. Answering the allegations in Paragraph 60, Adobe lacks knowledge or information

1 sufficient to form a belief about the truth of the allegations in Paragraph 60 and on that basis
2 denies the allegations.

3 61. Answering the allegations in Paragraph 61, Adobe lacks knowledge or information
4 sufficient to form a belief about the truth of the allegations in Paragraph 61 and on that basis
5 denies the allegations.

6 62. Answering the allegations in Paragraph 62, Adobe lacks knowledge or information
7 sufficient to form a belief about the truth of the allegations in Paragraph 62 and on that basis
8 denies the allegations.

9 63. Answering the allegations in Paragraph 63, Adobe lacks knowledge or information
10 sufficient to form a belief about the truth of the allegations in Paragraph 63 and on that basis
11 denies the allegations.

12 64. Answering the allegations in Paragraph 64, Adobe lacks knowledge or information
13 sufficient to form a belief about the truth of the allegations in Paragraph 64 and on that basis
14 denies the allegations.

15 65. Answering the allegations in Paragraph 65, Adobe lacks knowledge or information
16 sufficient to form a belief about the truth of the allegations in Paragraph 65 and on that basis
17 denies the allegations.

18 66. The allegations in Paragraph 66 are not susceptible to being answered because of
19 their ambiguity and because they call for conclusions of law to which no answer is necessary. To
20 the extent that an answer is deemed necessary, Adobe lacks knowledge or information sufficient
21 to form a belief about the truth of the allegations in Paragraph 66 and on that basis denies the
22 allegations.

23 67. Answering the allegations in Paragraph 67, Adobe lacks knowledge or information
24 sufficient to form a belief about the truth of the allegations in Paragraph 67 and on that basis
25 denies the allegations.

26 68. Answering the allegations in Paragraph 68, Adobe lacks knowledge or information
27 sufficient to form a belief about the truth of the allegations in Paragraph 68 and on that basis
28 denies the allegations.

1 69. Answering the allegations in Paragraph 69, Adobe lacks knowledge or information
2 sufficient to form a belief about the truth of the allegations in Paragraph 69 and on that basis
3 denies the allegations.

4 70. Answering the allegations in Paragraph 70, Adobe lacks knowledge or information
5 sufficient to form a belief about the truth of the allegations in Paragraph 70 and on that basis
6 denies the allegations.

7 71. Answering the allegations in Paragraph 71, to the extent that the allegations are
8 directed at other defendants or third-parties, Adobe lacks knowledge or information sufficient to
9 form a belief as to the truth of the allegations and on that basis denies them. To the extent that the
10 allegations are directed at Adobe, Adobe denies the allegations in Paragraph 71.

11 72. The allegations in Paragraph 72 are not susceptible to being answered because of
12 their ambiguity. To the extent that an answer is deemed necessary and the allegations are directed
13 at other defendants or third-parties, Adobe lacks knowledge or information sufficient to form a
14 belief as to the truth of the allegations and on that basis denies them. To the extent that an answer
15 is deemed necessary and the allegations are directed at Adobe, Adobe denies the allegations in
16 Paragraph 72.

17 73. Answering the allegations in Paragraph 73, Adobe admits that at times, to facilitate
18 numerous collaborative endeavors, Adobe and Apple decided not to actively solicit each other's
19 employees; hiring was never prohibited. Adobe denies the remaining allegations in Paragraph 73.

20 74. The allegations in Paragraph 74 are not susceptible to being answered because of
21 their ambiguity. To the extent that an answer is deemed necessary and the allegations are directed
22 at other defendants or third-parties, Adobe lacks knowledge or information sufficient to form a
23 belief as to the truth of the allegations and on that basis denies them. To the extent that an answer
24 is deemed necessary and the allegations are directed at Adobe, Adobe admits that a former Adobe
25 senior executive and a former Apple senior executive decided that Adobe and Apple would not
26 actively solicit each other's employees and that they had communications about the decision.
27 Adobe denies the remaining allegations in Paragraph 74.

28 75. The allegations in Paragraph 75 are not susceptible to being answered because of

1 their ambiguity. To the extent that an answer is deemed necessary and the allegations are directed
2 at other defendants or third-parties, Adobe lacks knowledge or information sufficient to form a
3 belief as to the truth of the allegations and on that basis denies them. To the extent that an answer
4 is deemed necessary and the allegations are directed at Adobe, Adobe admits that at times it
5 decided not to, and asked its recruiters not to, actively solicit Apple employees in Santa Clara
6 County and otherwise denies the allegations in Paragraph 75.

7 76. The allegations in Paragraph 76 are not susceptible to being answered because of
8 their ambiguity. To the extent that an answer is deemed necessary, Adobe admits that, at times,
9 to foster collaborations, Adobe and Apple decided not to actively solicit each other's employees.
10 Adobe denies the remaining allegation in Paragraph 76.

11 77. The allegations in Paragraph 77 are not susceptible to being answered because of
12 their ambiguity. To the extent that an answer is deemed necessary and the allegations are directed
13 at other defendants or third-parties, Adobe lacks knowledge or information sufficient to form a
14 belief as to the truth of the allegations and on that basis denies them. To the extent that an answer
15 is deemed necessary and the allegations are directed at Adobe, Adobe denies the allegations in
16 Paragraph 77.

17 78. The allegations in Paragraph 78 are not susceptible to being answered because of
18 their ambiguity. To the extent that an answer is deemed necessary and the allegations are directed
19 at other defendants or third-parties, Adobe lacks knowledge or information sufficient to form a
20 belief as to the truth of the allegations and on that basis denies them. To the extent that an answer
21 is deemed necessary and the allegations are directed at Adobe, Adobe admits that at times it asked
22 its recruiters not to actively solicit Apple employees and included Apple on its internal list of
23 "Companies that are off limits," which was created and maintained in Santa Clara County.
24 Adobe denies the remaining allegations in Paragraph 78.

25 79. The allegations in Paragraph 79 are not susceptible to being answered because of
26 their ambiguity. To the extent that an answer is deemed necessary and the allegations are directed
27 at other defendants or third-parties, Adobe lacks knowledge or information sufficient to form a
28 belief as to the truth of the allegations and on that basis denies them. To the extent that an answer

1 is deemed necessary and the allegations are directed at Adobe, Adobe denies that there was a
2 conspiracy and otherwise denies the allegations in Paragraph 79.

3 80. Answering the allegations in Paragraph 80, Adobe lacks knowledge or information
4 sufficient to form a belief about the truth of the allegations in Paragraph 80 and on that basis
5 denies the allegations.

6 81. Answering the allegations in Paragraph 81, Adobe lacks knowledge or information
7 sufficient to form a belief about the truth of the allegations in Paragraph 81 and on that basis
8 denies the allegations.

9 82. Answering the allegations in Paragraph 82, Adobe lacks knowledge or information
10 sufficient to form a belief about the truth of the allegations in Paragraph 82 and on that basis
11 denies the allegations.

12 83. Answering the allegations in Paragraph 83, Adobe lacks knowledge or information
13 sufficient to form a belief about the truth of the allegations in Paragraph 83 and on that basis
14 denies the allegations.

15 84. Answering the allegations in Paragraph 84, Adobe lacks knowledge or information
16 sufficient to form a belief about the truth of the allegations in Paragraph 84 and on that basis
17 denies the allegations.

18 85. The allegations in Paragraph 85 are not susceptible to being answered because of
19 their ambiguity. To the extent that an answer is deemed necessary and the allegations are directed
20 at other defendants or third-parties, Adobe lacks knowledge or information sufficient to form a
21 belief as to the truth of the allegations and on that basis denies them. To the extent that an answer
22 is deemed necessary and the allegations are directed at Adobe, Adobe denies the allegations in
23 Paragraph 85.

24 86. Answering the allegations in Paragraph 86, Adobe lacks knowledge or information
25 sufficient to form a belief about the truth of the allegations in Paragraph 86 and on that basis
26 denies the allegations.

27 87. Answering the allegations in Paragraph 87, Adobe lacks knowledge or information
28 sufficient to form a belief about the truth of the allegations in Paragraph 87 and on that basis

1 denies the allegations.

2 88. Answering the allegations in Paragraph 88, Adobe lacks knowledge or information
3 sufficient to form a belief about the truth of the allegations in Paragraph 88 and on that basis
4 denies the allegations.

5 89. Answering the allegations in Paragraph 89, Adobe lacks knowledge or information
6 sufficient to form a belief about the truth of the allegations in Paragraph 89 and on that basis
7 denies the allegations.

8 90. Answering the allegations in Paragraph 90, Adobe lacks knowledge or information
9 sufficient to form a belief about the truth of the allegations in Paragraph 90 and on that basis
10 denies the allegations.

11 91. Answering the allegations in Paragraph 91, Adobe lacks knowledge or information
12 sufficient to form a belief about the truth of the allegations in Paragraph 91 and on that basis
13 denies the allegations.

14 92. Answering the allegations in Paragraph 92, Adobe lacks knowledge or information
15 sufficient to form a belief about the truth of the allegations in Paragraph 92 and on that basis
16 denies the allegations.

17 93. Answering the allegations in Paragraph 93, Adobe lacks knowledge or information
18 sufficient to form a belief about the truth of the allegations in Paragraph 93 and on that basis
19 denies the allegations.

20 94. Answering the allegations in Paragraph 94, Adobe lacks knowledge or information
21 sufficient to form a belief about the truth of the allegations in Paragraph 94 and on that basis
22 denies the allegations.

23 95. Answering the allegations in Paragraph 95, Adobe lacks knowledge or information
24 sufficient to form a belief about the truth of the allegations in Paragraph 95 and on that basis
25 denies the allegations.

26 96. Answering the allegations in Paragraph 96, Adobe lacks knowledge or information
27 sufficient to form a belief about the truth of the allegations in Paragraph 96 and on that basis
28 denies the allegations.

1 97. Answering the allegations in Paragraph 97, Adobe lacks knowledge or information
2 sufficient to form a belief about the truth of the allegations in Paragraph 97 and on that basis
3 denies the allegations.

4 98. The allegations in Paragraph 98 are not susceptible to being answered because of
5 their ambiguity. To the extent that an answer is deemed necessary and the allegations are directed
6 at other defendants or third-parties, Adobe lacks knowledge or information sufficient to form a
7 belief as to the truth of the allegations and on that basis denies them. To the extent that an answer
8 is deemed necessary and the allegations are directed at Adobe, Adobe denies the allegations in
9 Paragraph 98.

10 99. Answering the allegations in Paragraph 99, Adobe lacks knowledge or information
11 sufficient to form a belief about the truth of the allegations in Paragraph 99 and on that basis
12 denies the allegations.

13 100. Answering the allegations in Paragraph 100, Adobe lacks knowledge or
14 information sufficient to form a belief about the truth of the allegations in Paragraph 100 and on
15 that basis denies the allegations.

16 101. Answering the allegations in Paragraph 101, Adobe lacks knowledge or
17 information sufficient to form a belief about the truth of the allegations in Paragraph 101 and on
18 that basis denies the allegations.

19 102. Answering the allegations in Paragraph 102, Adobe lacks knowledge or
20 information sufficient to form a belief about the truth of the allegations in Paragraph 102 and on
21 that basis denies the allegations.

22 103. The allegations in Paragraph 103 are not susceptible to being answered because of
23 their ambiguity. To the extent that an answer is deemed necessary and the allegations are directed
24 at other defendants or third-parties, Adobe lacks knowledge or information sufficient to form a
25 belief as to the truth of the allegations and on that basis denies them. To the extent that an answer
26 is deemed necessary and the allegations are directed at Adobe, Adobe denies the allegations in
27 Paragraph 103.

28 104. Answering the allegations in Paragraph 104, Adobe lacks knowledge or

1 information sufficient to form a belief about the truth of the allegations in Paragraph 104 and on
2 that basis denies the allegations.

3 105. Answering the allegations in Paragraph 105, Adobe lacks knowledge or
4 information sufficient to form a belief about the truth of the allegations in Paragraph 105 and on
5 that basis denies the allegations.

6 106. Answering the allegations in Paragraph 106, Adobe lacks knowledge or
7 information sufficient to form a belief about the truth of the allegations in Paragraph 106 and on
8 that basis denies the allegations.

9 107. Answering the allegations in Paragraph 107, Adobe lacks knowledge or
10 information sufficient to form a belief about the truth of the allegations in Paragraph 107 and on
11 that basis denies the allegations.

12 108. The allegations in Paragraph 108 are not susceptible to being answered because of
13 their ambiguity and because they state conclusions of law to which no answer is necessary. To
14 the extent that an answer is deemed necessary and the allegations are directed at other defendants
15 or third-parties, Adobe lacks knowledge or information sufficient to form a belief as to the truth
16 of the allegations and on that basis denies them. To the extent that an answer is deemed
17 necessary and the allegations are directed at Adobe, Adobe denies the allegations in Paragraph
18 108.

19 109. The allegations in Paragraph 109 are not susceptible to being answered because of
20 their ambiguity. To the extent that an answer is deemed necessary and the allegations are directed
21 at other defendants or third-parties, Adobe lacks knowledge or information sufficient to form a
22 belief as to the truth of the allegations and on that basis denies them. To the extent that an answer
23 is deemed necessary and the allegations are directed at Adobe, Adobe denies the allegations in
24 Paragraph 109.

25 110. The allegations in Paragraph 110 are not susceptible to being answered because of
26 their ambiguity and because they state conclusions of law to which no answer is necessary. To
27 the extent that an answer is deemed necessary and the allegations are directed at other defendants
28 or third-parties, Adobe lacks knowledge or information sufficient to form a belief as to the truth

1 of the allegations and on that basis denies them. To the extent that an answer is deemed
2 necessary and the allegations are directed at Adobe, Adobe denies the allegations in Paragraph
3 110.

4 111. The allegations in Paragraph 111 are not susceptible to being answered because of
5 their ambiguity. To the extent that an answer is deemed necessary and the allegations are directed
6 at other defendants or third-parties, Adobe lacks knowledge or information sufficient to form a
7 belief as to the truth of the allegations and on that basis denies them. To the extent an answer is
8 deemed necessary and the allegations are directed at Adobe, Adobe admits that the DOJ
9 conducted an investigation related to certain employment practices of defendants, and it admits
10 that the DOJ issued a Civil Investigative Demand to Adobe and that Adobe produced documents
11 to the DOJ. Adobe otherwise denies the allegations in Paragraph 111.

12 112. Adobe admits the allegations in the first and second sentences of Paragraph 111.
13 The allegations in the third sentence in Paragraph 111 are not susceptible to being answered
14 because of their ambiguity. To the extent that an answer is deemed necessary and the allegations
15 are directed at other defendants or third-parties, Adobe lacks knowledge or information sufficient
16 to form a belief as to the truth of the allegations and on that basis denies them. To the extent that
17 an answer is deemed necessary and the allegations are directed at Adobe, Adobe denies the
18 allegations in Paragraph 111.

19 113. The allegations in Paragraph 112 are not susceptible to being answered because of
20 their ambiguity. To the extent that an answer is deemed necessary and the allegations are directed
21 at other defendants or third-parties, Adobe lacks knowledge or information sufficient to form a
22 belief as to the truth of the allegations and on that basis denies them. To the extent that an answer
23 is deemed necessary and the allegations are directed at Adobe, Adobe lacks knowledge or
24 information about the DOJ's actual conclusions and on that basis denies the allegations. Adobe
25 denies the allegations in the second and third sentences that the DOJ made factual or legal
26 findings. The quoted text are unproven allegations made by the DOJ in the Complaint filed in
27 *United States v. Adobe Sys. Inc., Apple Inc., Google Inc., Intel Corp., Intuit, Inc. & Pixar*, No.
28 1:10-cv-01629-RBW (D.D.C. Sept. 24, 2010) (Doc. 1). That matter was resolved without

litigation and was resolved “without trial or adjudication of any issue of fact or law.” *United States v. Adobe Sys. Inc., Apple Inc., Google Inc., Intel Corp., Intuit, Inc. & Pixar*, No. 1:10-cv-01629-RBW (D.D.C. Mar. 18, 2011) (Doc. 17), pp. 2-3. Adobe denies that it engaged in any unlawful conduct or violated any law, denies each allegation in the quoted text, and otherwise denies the remaining allegations in Paragraph 112.

114. The allegations in Paragraph 112 are not susceptible to being answered because of their ambiguity. To the extent that an answer is deemed necessary and the allegations are directed at other defendants or third-parties, Adobe lacks knowledge or information sufficient to form a belief as to the truth of the allegations and on that basis denies them. To the extent that an answer is deemed necessary and the allegations are directed at Adobe, Adobe lacks knowledge or information about the DOJ’s actual conclusions and on that basis denies the allegations. The quoted text are unproven allegations made by the DOJ in the Complaint filed in *United States v. Adobe Sys. Inc., Apple Inc., Google Inc., Intel Corp., Intuit, Inc. & Pixar*, No. 1:10-cv-01629-RBW (D.D.C. Sept. 24, 2010) (Doc. 1). Adobe denies that it engaged in any unlawful conduct or violated any law, denies each allegation in the quoted text, and otherwise denies the remaining allegations in Paragraph 113.

115. Answering the allegations in the first and second sentences of Paragraph 114, Adobe admits that that the DOJ filed complaints against Adobe, Apple, Google, Intel, Intuit, and Pixar on September 24, 2010 and against Lucasfilm and Pixar on December 21, 2010 regarding bilateral non-solicit agreements, but litigation did not follow. Answering the allegations in the third sentence of Paragraph 114, Adobe admits that the stipulated proposed final judgment filed by the DOJ entered in the case states that “[t]he Complaint states a claim upon which relief may be granted against the Defendants.” Adobe otherwise denies the allegations in Paragraph 114.

116. The allegations in Paragraph 115 are not susceptible to being answered because of their ambiguity and because they state conclusions of law to which no answer is necessary. To the extent that an answer is deemed necessary, Adobe answers that the Final Judgments speak for themselves and otherwise denies the allegations in Paragraph 115.

117. The allegations in Paragraph 116 are not susceptible to being answered because of

1 their ambiguity. To the extent that an answer is deemed necessary and the allegations are directed
 2 at other defendants or third-parties, Adobe lacks knowledge or information sufficient to form a
 3 belief as to the truth of the allegations and on that basis denies them. To the extent that an answer
 4 is deemed necessary and the allegations are directed at Adobe, Adobe admits that it has
 5 acknowledged that Adobe and Apple decided not to actively solicit each other's employees and
 6 otherwise denies the allegations in Paragraph 116.

7 118. The allegations in Paragraph 117 are not susceptible to being answered because of
 8 their ambiguity. To the extent that an answer is deemed necessary and the allegations are directed
 9 at other defendants or third-parties, Adobe lacks knowledge or information sufficient to form a
 10 belief as to the truth of the allegations and on that basis denies them. To the extent that an answer
 11 is deemed necessary and the allegations are directed at Adobe, Adobe admits the DOJ did not
 12 pursue monetary penalties from the Defendants. Adobe otherwise denies the allegations in
 13 Paragraph 117.

14 119. Adobe denies the allegations in Paragraph 118.

15 **FIRST CLAIM FOR RELIEF**

16 120. Adobe repeats and incorporates by reference paragraphs 1 through 118 as if fully
 17 set forth herein.

18 121. Adobe denies the allegations in Paragraph 120.

19 122. Adobe denies the allegations in Paragraph 121.

20 123. Adobe denies the allegations in Paragraph 122.

21 124. Adobe denies the allegations in Paragraph 123.

22 125. Adobe denies the allegations in Paragraph 124.

23 126. Adobe denies the allegations in Paragraph 125.

24 127. Adobe denies the allegations in Paragraph 126.

25 **SECOND CLAIM FOR RELIEF**

26 128. Adobe repeats and incorporates by reference paragraphs 1 through 126 as if fully
 27 set forth herein.

28 129. Adobe denies the allegations in Paragraph 128.

130. Adobe denies the allegations in Paragraph 129.

131. Adobe denies the allegations in Paragraph 130.

132. Adobe denies the allegations in Paragraph 131.

133. Adobe denies the allegations in Paragraph 132.

134. Adobe denies the allegations in Paragraph 133.

135. Adobe denies the allegations in Paragraph 134.

136. Adobe denies the allegations in Paragraph 135.

THIRD CLAIM FOR RELIEF

Paragraphs 136 through 143 of the Consolidated Amended Complaint consist of Plaintiffs' withdrawn Third Claim for Relief under California Business and Professions Code § 16600, to which no response is necessary. To the extent that an answer is deemed necessary, Adobe denies the allegations in Paragraphs 136 through 143.

FOURTH CLAIM FOR RELIEF

Paragraphs 144 through 152 of the Consolidated Amended Complaint consist of Plaintiffs' dismissed Fourth Claim for Relief under California Business and Professions Code §§ 17200, et seq., to which no response is necessary. To the extent that an answer is deemed necessary, Adobe denies the allegations in Paragraphs 144 through 152.

PRAYER FOR RELIEF

The remaining Paragraphs 153 through 164 of the Consolidated Amended Complaint consist of Plaintiffs' Prayer For Relief to which no response is necessary. To the extent that an answer is deemed necessary, Adobe denies the allegations in Paragraphs 153 through 164.

AFFIRMATIVE DEFENSES

Adobe sets forth below its affirmative defenses. Each defense is asserted as to all claims against Adobe. By setting forth these affirmative defenses, Adobe does not assume the burden of proving any fact, issue, or element of a cause of action where such burden properly belongs to the Plaintiffs. Moreover, nothing stated herein is intended or shall be construed as an admission that any particular issue or subject matter is relevant to the Plaintiffs' allegations.

Adobe reserves the right to amend or supplement its affirmative defenses and raise

1 counterclaims as additional facts concerning its defenses become known to it.

2 As separate and distinct affirmative defenses, Adobe alleges as follows:

3 **FIRST AFFIRMATIVE DEFENSE**

4 Plaintiffs' Consolidated Amended Complaint, in whole or in part, fails to state any claim
5 upon which relief can be granted against Adobe.

6 **SECOND AFFIRMATIVE DEFENSE**

7 The Plaintiffs and/or others claimed to be members of the putative class lack standing to
8 assert their claims and/or to seek some or all of the requested relief.

9 **THIRD AFFIRMATIVE DEFENSE**

10 The Plaintiffs and/or putative class members have sustained no injury in fact or damages
11 caused by any act or omission of Adobe.

12 **FOURTH AFFIRMATIVE DEFENSE**

13 The Plaintiffs' and/or putative class members' claims are barred, in whole or in part,
14 because they have not suffered and will not suffer any injury that is cognizable under the antitrust
15 laws.

16 **FIFTH AFFIRMATIVE DEFENSE**

17 Adobe's alleged activities do not give rise to antitrust liability, because they did not result
18 in adverse effects on competition or, in the alternative, any such effects were outweighed by the
19 pro-competitive benefits of the activities.

20 **SIXTH AFFIRMATIVE DEFENSE**

21 The Plaintiffs' and/or putative class members' claims are barred, in whole or in part,
22 because Adobe has at all times and in all relevant matters acted reasonably, serving legitimate
23 business purposes, in furtherance of trade, in good faith, and with the purpose and effect of
24 promoting, encouraging, or increasing competition. Adobe has not acted with the purpose or
25 intent to suppress or restrain competition.

26 **SEVENTH AFFIRMATIVE DEFENSE**

27 The Plaintiffs' and/or putative class members' claims are barred, in whole or in part,
28 because any of Adobe's acts or practices that are the subject of the Consolidated Amended

1 Complaint were economically justified and resulted from a good-faith effort to meet competition
2 or market conditions.

3 **EIGHTH AFFIRMATIVE DEFENSE**

4 The Plaintiffs' and/or putative class members' claims are barred, in whole or in part, by
5 the applicable statutes of limitations and/or the doctrine of laches.

6 **NINTH AFFIRMATIVE DEFENSE**

7 The Plaintiffs' and/or putative class members' claims are barred, in whole or in part,
8 under the doctrines of waiver and/or estoppel.

9 **TENTH AFFIRMATIVE DEFENSE**

10 The Plaintiffs' and/or putative class members' claims are barred, in whole or in part,
11 because the alleged damages sought are too speculative and uncertain and because of the
12 impossibility of ascertaining and allocating those damages.

13 **ELEVENTH AFFIRMATIVE DEFENSE**

14 The Plaintiffs and/or putative class members are barred from recovery of any damages
15 because of and to the extent of their failure to mitigate damages.

16 **TWELFTH AFFIRMATIVE DEFENSE**

17 Adobe is entitled to set off of any amounts paid to the Plaintiffs and/or putative class
18 members by any defendants other than Adobe, including defendants who settle.

19 **THIRTEENTH AFFIRMATIVE DEFENSE**

20 The Consolidated Amended Complaint fails to allege fraudulent concealment with
21 particularity.

22 **FOURTEENTH AFFIRMATIVE DEFENSE**

23 The Plaintiffs' and/or putative class members' claims are barred to the extent that they
24 agreed to arbitration or chose a different forum for the resolution of their claims.

25 **FIFTEENTH AFFIRMATIVE DEFENSE**

26 Any injuries or damages the Plaintiffs and/or putative class members suffered were caused
27 solely and proximately by the acts and omissions of others.
28

SIXTEENTH AFFIRMATIVE DEFENSE

To the extent that any actionable conduct occurred, the Plaintiffs' and/or putative class members' claims against Adobe are barred because all such conduct would have been committed by individuals acting ultra vires.

SEVENTEENTH AFFIRMATIVE DEFENSE

The Plaintiffs' and/or putative class members' claims are barred, in whole or in part, due to release, discharge, and/or settlement.

EIGHTEENTH AFFIRMATIVE DEFENSE

Adobe adopts by reference any applicable defense pleaded by any other defendant not otherwise expressly set forth herein.

PRAYER FOR RELIEF

WHEREFORE, Adobe prays as follows:

1. That Plaintiffs take nothing by reason of their Consolidated Amended Complaint, and that judgment be rendered in favor of Adobe.
2. That the Court dismiss the Consolidated Amended Complaint in its entirety, with prejudice;
3. That Adobe be awarded its costs of suit and attorney's fees incurred in this action (including all costs and fees associated with collecting, processing, and reviewing documents including electronically stored information), to the maximum extent permitted by law; and
4. For such other relief as the Court deems proper.

DEMAND FOR JURY TRIAL

Adobe hereby demands trial by jury in this action on all matters triable to a jury.

Dated: May 21, 2012

Respectfully submitted,

JONES DAY

By: /s/David C. Kiernan

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